

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012100669

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On October 16, 2012 Student, through counsel, filed a Due Process Hearing Request¹ (complaint) naming the Torrance Unified School District (District). On October 18, 2012, Student re-filed her complaint in pro per.

On October 31, 2012, the District timely filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.³ These

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

Student’s complaint contains 11 issues, most of which can be divided by school year. Student raises two allegations that apply to school years 2010-2011, 2011-2012, and 2012-2013. Student alleges that for each of those school years the District denied her a free and appropriate public education (FAPE) by failing to offer Student: 1) an academic aide exclusively dedicated to Student; and 2) a placement in the least restrictive environment, specifically, a general education classroom for no less than 70 percent of the school day. Student also alleges that during the 2010-2011 and 2011-2012 school years, the District denied her a FAPE by failing to offer extended school year (ESY) instruction and programming. As to particular school years, Student alleges that the District denied her a FAPE by: 1) failing to take appropriate action to protect Student from being bullied during the 2011-2012 school year; 2) failing to respond to Parent’s request for a visual processing assessment at the May 2012 IEP team meeting; and 3) failing to implement the agreement at the June 2012 IEP team meeting to provide a communications log.

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

In its NOI, the District contends that Student's allegations regarding the District's alleged failure to place Student in general education for a minimum of 70 percent of the school day are insufficient because Student provides no information regarding which portion of Student's school day should be in general education and which portion should be in special education. The District also contends that Student's allegations regarding the District's alleged failure to provide her with extended school programming is insufficient because Student has not provided any facts supporting her allegations that Student needs ESY in order to prevent regression during the summer break.

The District's contentions are well-taken. Student fails to provide sufficient facts to support her contention that she should attend a greater portion of her day in the general education environment. She fails to state why her present placement is too restrictive. Student also fails to state whether the increase in her general education placement should be during academic or non-academic time and if during academic instruction, which subjects should be taught to her in general education and which in special education. With regard to her contention that she requires ESY to prevent regression, Student fails to provide sufficient facts to support this allegation. Student does not state why or how she has regressed during previous summer breaks, and what type of instruction she requires during the summer to prevent further regression. Therefore, Student's issues four, five, six, seven and eight are insufficient as plead.

The District's NOI, however, does not address any other issue raised by Student in her complaint. Therefore, Student's issues one, two, three, nine, 10, and 11, are sufficient as plead and may proceed to hearing without further revision.

The District also contends that Student fails to support her proposed resolution of compensatory education from Lindamood Bell to be paid for by the District. A complaint is also required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) However, there is no requirement that the petitioning party prove in his or her complaint how the proposed resolution relates to the allegations in the complaint. Although Student's proposed resolution asking for Lindamood-Bell services is not well-defined, Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time. It will be Student's burden to prove that Lindamood-Bell services are an appropriate remedy should this matter proceed to hearing and should Student prevail on any or all of her allegations.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint ⁸Parents are

⁸ Ed. Code, § 56505.

encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Issues one, two, three, nine, 10, and 11 of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues three, four, five, six, seven, and eight of Student's complaint are insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁹

4. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues one, tow, three, nine, 10, and 11 of Student's complaint.

6. Student's parent should immediately contact the Office of Administrative Hearings in Sacramento if she wishes mediator assistance as described above.

Dated: November 1, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

⁹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.